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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 1007/2009 on trade in seal products

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products sets out a general ban on placing of these products on the Union's market ("Basic Regulation"). The Basic Regulation contains an exception from the general ban for seal products derived from hunts traditionally conducted by Inuit and other indigenous communities that contribute to their subsistence ("the IC exception"). It also contains exceptions for the import of seal products derived from seals hunted for the sole purpose of the sustainable management of marine resources on a not-for profit basis and not for commercial reasons ("the MRM exception") as well as for imports of an occasional nature and which consist exclusively of goods for the personal use of travellers or their families. An Implementing Regulation, Commission Regulation (EU) No 737/2010 of 10 August 2010, lays down detailed rules for the implementation of the Basic Regulation ("Implementing Regulation").

Both acts ("the EU seal regime") were challenged by Canada and Norway in the World Trade Organisation (WTO) in the dispute on *EC – Measures Prohibiting the Importation and Marketing of Seal Products* (DS400 and DS401). On 18 June 2014, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body reports. While the WTO reports concluded that the ban on seal products can, in principle, be justified for moral concerns regarding the welfare of seals, they took issue with the two exceptions, the IC exception and the MRM exception. The MRM exception was found not to be justified as the possible difference in the commercial dimension of commercial hunts and MRM hunts (small scale, non-profit) was not sufficient to justify the distinction. With regard to the IC exception, while in principle reflecting a legitimate distinction, the Appellate body ruled, that some elements of its design and application amounted to "arbitrary and unjustifiable discrimination".

On 10 July 2014 the European Union notified the DSB that it intends to implement the recommendations and rulings of the DSB in this dispute in a manner that respects its WTO obligations.

On 5 September 2014, the European Union, Canada and Norway agreed that the reasonable period for implementing the DSB recommendations and rulings would be 16 months. Accordingly, the reasonable period of time will expire on 18 October 2015.

The purpose of this legislative proposal is to implement the DSB recommendations and rulings with regard to the Basic Regulation. It also creates the legal basis for bringing Regulation (EU) No 737/2010 in compliance with the said rulings. The concerns regarding the MRM exception are remedied by removing the MRM exception from the Basic Regulation. The concerns relating to the design and application of the IC exception are addressed by modifying the exception, in particular by linking its use to the respect of animal welfare and providing for a limit to the placing of the market of seal products if the scale of the hunt or other circumstances are such as to indicate that the hunt is being conducted primarily for commercial purposes. In addition, experts from the Commission are working together with experts from Canada in order to set up the necessary attestation system to enable Canadian Inuit to make use of the Inuit exception under the EU seal regime.

In addition, it is also necessary to use this initiative to align the reference to the regulatory procedure with scrutiny in Regulation (EC) No 1007/2009 to Article 290 of the Treaty on the Functioning of the European Union (TFEU). [Given the tight timeframe for compliance with the WTO rulings and to allow for a swift adoption of the proposal by the legislator, the](#)

Commission exceptionally took on board in this proposal an amendment of the Parliament proposed in the context of proposal COM (2013)451 (this proposal also covered the alignment of Regulation 1007/2009) in relation to the duration of the delegation.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

No impact assessment was carried out as this action does not present a new policy initiative but is required to bring the EU's current legislation into compliance with the WTO ruling thereby ensuring fulfilment of Union's international obligations. The limited modifications introduced by this proposal did not call for a new impact assessment as compared to the impact assessment undertaken before the adoption of the Basic Regulation in 2009.

3. LEGAL ELEMENTS OF THE PROPOSAL

- Legal basis

The legal basis for this proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which was the legal basis for the Basic Regulation which is being modified by the present proposal. According to Article 114 TFEU the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. The Basic Regulation was adopted with the objective of eliminating obstacles to the functioning of the internal market due to differences in national measures regulating trade in seal products.

- Principles of Subsidiarity and Proportionality

Bringing the Basic Regulation into compliance with the recommendations and rulings adopted by the WTO Dispute Settlement Body can only be achieved by modifying the Basic Regulation with regard to the contested aspects. The proposal is limited to what is necessary to achieve the WTO compatibility of the contested measure.

- Choice of instruments

Proposed instrument: Regulation of the European Parliament and the Council

Other means would not be adequate as a regulation can only be modified by the same instrument, i.e. a regulation.

4. BUDGETARY IMPLICATION

This proposal has no implications for the budget of the European Union.

5. OPTIONAL ELEMENTS

Not applicable

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 1007/2009 of the European Parliament and of the Council² was adopted with the objective of eliminating obstacles to the functioning of the internal market due to differences in national measures regulating trade in seal products. Those measures were adopted in response to public moral concerns about the animal welfare aspects of the killing of seals and the possible presence on the market of products obtained from animals killed in a way that causes excessive pain, distress, fear and other forms of suffering. Such concerns were supported by scientific evidence showing that a genuinely humane killing method cannot be consistently and effectively applied and enforced in the specific conditions in which seal hunting takes place. In order to achieve that objective, Regulation (EC) No 1007/2009 introduced, as a general rule, a prohibition of placing on the market of seal products.
- (2) At the same time, seal hunting is an integral part of the culture and identity of the Inuit and other indigenous communities and makes a major contribution to their subsistence. For those reasons, seal hunts traditionally conducted by Inuit and other indigenous communities do not raise the same public moral concerns as the hunts

¹ OJ C [...], [...], p. [...].

² Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ L 286, 31.10.2009, p 36).

conducted primarily for commercial purposes. Moreover, it is broadly recognised that the fundamental and social interests of Inuit and other indigenous communities should not be adversely affected, in accordance with United Nations Declaration on the rights of Indigenous Peoples and other relevant international instruments. For those reasons, by way of exception, Regulation (EC) No 1007/2009 allows the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities and which contribute to their subsistence.

- (3) A genuinely humane killing method cannot be effectively and consistently applied in the hunts conducted by the Inuit and other indigenous communities, just like in the other seal hunts. Nonetheless, it is appropriate, in light of the objective pursued by Regulation (EC) No 1007/2009, to make the placing in the Union market of products resulting from hunts by the Inuit and other indigenous communities conditional upon those hunts being conducted in a manner which reduces pain, distress, fear or other forms of suffering of the animals hunted to the extent possible, while having regard to the traditional way of life and the subsistence needs of the Inuit and other indigenous communities. The exception granted in respect of seal products resulting from hunts conducted by Inuit and other indigenous communities should be limited to hunts that contribute to the subsistence need of those communities and are therefore not conducted primarily for commercial purposes. Thus, the Commission should be enabled to limit, if necessary, the quantity of seal products placed on the market under that exception in order to prevent the use of the exception by products resulting from hunts which are conducted primarily for commercial purposes.

- (4) Regulation (EC) No 1007/2009 also allows, by way of exception, the placing on the market of seal products where the hunt is conducted with the sole purpose of sustainable management of marine resources. While recognizing the importance of hunts for the purpose of sustainable management of marine resources, in practice, however, these hunts may be difficult to distinguish from the large hunts conducted primarily for commercial purposes. This may lead to unjustified discrimination between the seal products concerned. Therefore, this exception should no longer be provided for. This is without prejudice to the right of Member States to continue regulating hunts conducted for the purposes of management of marine resources.
- (5) In order to provide for detailed rules as regards placing on the market of seal products, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (6) Regulation (EC) No 1007/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1007/2009 is amended as follows:

- (1) Article 3 is replaced by the following:

"Article 3

Conditions for placing on the market

1. The placing on the market of seal products shall be allowed only where the seal products result from hunts conducted by Inuit and other indigenous communities, provided that the following conditions are all satisfied:
- (a) the hunt has been traditionally conducted by the community;
 - (b) the hunt contributes to the subsistence of the community and is not conducted primarily for commercial reasons;
 - (c) the hunt is conducted in a manner which reduces pain, distress, fear or other forms of suffering of the animals hunted to the extent possible taking into consideration the traditional way of life and the subsistence needs of the community.

The above conditions shall apply at the time or point of import for imported products.

2. The import of seal products shall also be allowed where it is of an occasional nature and consists exclusively of goods for the personal use of travellers or their families. The nature and quantity of such goods shall not be such as to indicate that they are being imported for commercial reasons.

3. The application of paragraphs 1 and 2 shall not undermine the achievement of the objective of this Regulation.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 4a in order to lay down detailed rules for the placing on the market of seal products in accordance with paragraphs 1 and 2.
5. If the number of seals hunted, the quantity of seal products being placed on the market pursuant to paragraph 1 or other circumstances are such as to indicate that a hunt is conducted primarily for commercial purposes, the Commission shall be empowered to adopt delegated acts in accordance with Article 4 in order to limit the quantity of products resulting from that hunt that may be placed on the market.
6. The Commission shall issue technical guidance notes setting out an indicative list of the codes of the Combined Nomenclature which may cover seal products subject to this Article."

(2) The following Article 4a is inserted:

"Article 4a
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3 shall be conferred on the Commission for a period of five years from ... *[insert date - the date of entry into force of this Regulation]*. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 3 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 3 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."
- (3) Article 5 is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President